

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDWARD HANSERD,

Petitioner,

Criminal No. 90-80594

vs.

HON. GEORGE CARAM STEEH

UNITED STATES OF AMERICA,

Respondent.

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ORDER DENYING PETITION FOR WRIT OF AUDITA QUERELA [DOC. 766]

Petitioner has filed a petition for writ of audita querela, requesting that his prior sentence be vacated and he be resentenced in light of U.S. v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005). Petitioner filed his motion on June 1, 2009. Because of the relief requested, the court will consider the petition to be one filed pursuant to 28 U.S.C. § 2255.

There is a one-year time limit for filing all petitions under § 2255. Ordinarily, the one-year period runs from “the date on which the judgment of conviction becomes final.” 28 U.S.C. §2255(1). For petitioner, that period expired in 1995, or one year after his petition was denied by the Supreme Court. See Clay v. United States, 537 U.S. 522, 527-28 (2003). The one-year period may also run from “the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.” §2255(3).

The Booker case was decided in 2005, so any request for relief would have to

have been filed by 2006. However, the Booker Court explicitly provided that its holding was to be applied “to all cases on direct review.” 125 S.Ct. at 769. The Supreme Court did not extend Booker to petitions seeking post-conviction relief. Every federal court to have decided the question of Booker’s retroactivity, including the Sixth Circuit, has ruled that Booker may not be retroactively invoked in the initial § 2255 petitions. See Humphress v. United States, 398 F.3d 855 (6th Cir. 2005).

Petitioner’s post-conviction petition is DISMISSED as untimely, and for the further reason that the Supreme Court’s holding in Booker does not apply to petitioner’s situation.

Now therefore,

IT IS HEREBY ORDERED that the petitioner’s motion for relief is DENIED.

Dated: February 2, 2010

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on February 2, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee  
Deputy Clerk